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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,611	03/28/2006	Andre' Scheibach	4102-59PUS	9409
27799	7590	09/03/2009		
COHEN, PONTANI, LIEBERMAN & PAVANE LLP			EXAMINER	
551 FIFTH AVENUE			MCKINLEY, CHRISTOPHER BRIAN	
SUITE 1210				
NEW YORK, NY 10176			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			09/03/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/573,611

Applicant(s)

SCHELBAACH, ANDRE'

Examiner

CHRISTOPHER MCKINLEY

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 27-39 and 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourque et al. (7,055,683) in view of Wieslander et al. (6,039,719) and Etesse et al. (2002/0166779). Bourque et al. disclose the limitations of the claims including a container (figs. 1-10a) comprising a first chamber (18) second chamber (22), breakable seam (20), spout (26), boat shaped section (top portion of container) and oval base (28). Bourque et al. does not have a three breakable seams, third and fourth chambers having varying designs or multiple oval shaped base parts in communication with their respective chambers. However, Wieslander et al. teach a container having seams (41, 42, 43) separating three chambers (44, 45, 50) wherein a third chamber tapers towards a base part (2) in order to store, mix and supply multiple fluids in a single container. Etesse et al. teach multiple oval shaped base parts (fig. 1, 6) in communication with their respective chambers thereby providing a stable that occupies minimal space. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to modify Bourque et al. with the aforementioned structural features in order to store, mix and supply multiple fluids within a container and provide a stable base occupying a minimal amount of storage space.

3. With regard to the fourth chamber and the shape thereof, the references as described above exclude a fourth chamber having a base part. However, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the references as described above with a fourth chamber having a base part and corresponding breakable seams in order to facilitate design choice and to supply the container with additional mixers. Since, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Additionally, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

4. Claims 40-47, 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as described in par. 4 above in view of Grabenkort (4,936,445). The references as described in par. 4 disclose the limitations of the claims substantially excluding what Grabenkort teaches, a stand (fig. 1, cylindrical portion near reference number 21) with filling hole (27) resting on said stand and a base plate (1), cylindrical stem (39) between base parts and stand and an intermediate piece (21) thereby providing a filling means for a container. Therefor it would have been obvious to one of ordinary skill in the art at the time of invention to modify the references as described in par. 4 with the aforementioned structural features in order to provide a suitable bottom filling means.

Response to Arguments

5. Applicant's arguments filed 5/20/2009 have been fully considered but they are not persuasive. Applicant contends Bourque does not disclose a breakable seam, Bourque does not have first and second breakable seams, neither Bourque nor Wieslander have chambers having bottom surfaces defined by respective base parts and, finally, neither Wieslander or Etesse teach have breakable seams. Examiner disagrees in part.
6. Examiner has made no claim to Bourque having first and second breakable seams, Bourque or Wieslander having chambers with bottom surfaces defined by respective base parts or Wieslander or Etesse having breakable seams. Rather, each invention is taken as a whole and applied to meet the limitations of the claims.
7. As stated in par. 2 above, Bourque discloses a breakable seam (20) separating first and second chambers. Wieslander teaches multiple seams and compartments and Etesse teaches chambers having bottom surfaces defined by respective base parts. Combination to combine the aforementioned reference is provided in par. 2.
8. As such, the rejection is proper.

Conclusion

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims

"define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER B. MCKINLEY whose telephone number is (571)272-3370. The examiner can normally be reached on Monday-Thursday, 7:00 AM - 5:30 PM.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/
Supervisory Patent Examiner, Art
Unit 3781

/C. B. M./
Examiner, Art Unit 3781